

AI Index: ASA 21/ 8472/2018

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Chairperson of the Special Committee on the Revision of the Anti-Terrorism Law of
the House of Representatives of the Republic of Indonesia
House of People's Representatives (DPR RI)
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24 May 2018

**OPEN LETTER TO THE CHAIRPERSON OF THE HOUSE OF REPRESENTATIVES OF
THE REPUBLIC OF INDONESIA ON THE LATEST PROPOSAL ON COUNTER-
TERRORISM LAW AMENDMENT**

Dear Chairperson,

Responding to a series of bomb blasts and attacks against police officers and people attending services in several Christian churches in the last few weeks in provinces of West Java, East Java and Riau, that killed at least 39 men, women and children and injured around 50 others, Amnesty International Indonesia expresses our deepest sympathy for those who lost loved ones.¹ The deliberate targeting and killing of women, men, and children by armed groups can never be justified and shows complete contempt for the most fundamental principles of human rights.

Our organization recognizes that the Indonesian authorities have a duty to protect the population from such attacks and to carry out investigations with a view to bringing the perpetrators to justice in fair trials without recourse to the death penalty. In doing so they must abide by Indonesia's obligations under international human rights law.

Through this letter, Amnesty International Indonesia is writing to express our concerns about the latest proposed amendments to the Law on Counter-Terrorism (No. 15/2003) dated 14 May 2018, while acknowledging that your committee has made some improvements to previous draft amendments to the law.² In our view, the latest proposed amendments undermine safeguards against arbitrary detention and against torture and other ill-treatment as well as expanding the scope of the application of the death penalty. We also have the concerns about the plans to deploy the military in counter-terrorism responses. We urge you to fundamentally revise the proposed

¹ The armed group calling itself Islamic State (IS) has reportedly claimed responsibility.

² Amnesty International and the Institute for Criminal Justice Reform (ICJR) commented on one of the previous draft amendments to the law in December 2016. See Open Letter to the Chairperson of the House of Representatives of the Republic of Indonesia on the New Proposal on Counter-Terrorism Law Revision, 5 December 2016 (AI Index: ASA 21/5273/2016), available at <https://www.amnesty.org/download/Documents/ASA2152732016ENGLISH.pdf>.

amendment as your office proceeds to approve the final text in the coming days or weeks.

BROADENING THE DEFINITION OF TERRORISM

The current Law on Counter-Terrorism, crime of terrorism provides that “every person who deliberately uses violence or threat of violence which creates or intends to create an atmosphere of terror or widespread fear to the people or to causes ‘multiple casualties’ by taking away the liberty or life and property of another person, or resulting in damage or destruction of vital strategic objects, an environmental or public facility or an international facility shall be punished with the death sentence, life imprisonment or imprisonment of between four and 20 years.”

In the preamble of the latest draft law dated 14 May 2018, the lawmakers added an element to crime of terrorism, namely “a threat against the state ideology”, a term that is broad and ambiguous and may be used by the state authorities to restrict the human rights to freedom of expression, association and peaceful assembly beyond what is demonstrably necessary and proportionate to counter specific threats, and risk impairing the very essence of these rights.³ Meanwhile in the ongoing discussion between the parliament and government, there is another proposal to add phrase “with ideological or political motive”.⁴ Vagueness in the drafting of these laws violates the requirement of legality under international human rights law – offences and other restrictions on rights must be formulated with enough precision for people to understand what conduct is prohibited.⁵

Amnesty International’s research has demonstrated that governments often invoke broad definitions of terrorism in order to repress peaceful political opposition, as well as the rights to freedom of expression, association, assembly and other human rights.

Further, certain human rights provisions may never be derogated from and must be respected and protected at all times, including within counter-terrorism laws,

³ In an authoritative General Comment, the Human Rights Committee, the expert body charged with overseeing the implementation of the International Covenant on Civil and Political Rights (ICCPR) has explained: “In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.” See Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 6.

⁴ “*Susun ulang dua definisi terorisme, pemerintah masukkan motif politik* [The government included political motive in redefining the concept of terrorism]”, Detik.com, 23 May 2018, available at: https://news.detik.com/berita/d-4034671/susun-ulang-2-definisi-terorisme-pemerintah-masukkan-motif-politik?_ga=2.184692522.2047906380.1526958233-1659217719.1462227740

⁵ See for instance, Human Rights Committee, Concluding observations on Ethiopia, CCPR/C/ETH/CO/1, para. 15: “The State party should ensure that its anti-terrorism legislation defines the nature of those acts with sufficient precision to enable individuals to regulate their conduct accordingly [...]”. This requirement was recalled in similar terms by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; see Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Report to the Commission on Human Rights, E/CN.4/2006/98, para. 46: “The first requirement of article 15, paragraph 1, [ICCPR] is that the prohibition of terrorist conduct must be undertaken by national or international prescriptions of law. To be ‘prescribed by law’ the prohibition must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct”.

measures, and operations. These include, among others, the right to life, freedom from torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment), basic fair trial rights and freedom of thought, conscience and religion.⁶ As to restrictions on other rights, only restrictions that are demonstrated to be necessary and proportionate to specific threats or public interest are permitted, and no counter-terrorism related law, measure or operation may ever impair the essence of these rights.⁷

PROLONGING PRE-TRIAL DETENTION WITHOUT JUDICIAL SUPERVISION

Under the draft amendment to Article 28 of the Law, the period during which the police can detain a person without charge is extended to 21 days (for ordinary crimes generally it is one day). As stipulated by Article 25, once charged and named as a suspect, the person can be detained for a further period of up to 290 days (9 months and 20 days) before being brought to trial (that is, a total of up to 311 days after arrest). For 221 days of this period, the individual can be held on the sole authority of the police without being brought to court. Subsequently, the police can seek extensions from the prosecutor and from the courts, but at no point during this period is the individual brought before a judge. Under the Counter-Terrorism Law (No. 15/2003) as it currently stands, a suspect can be detained up to six months before trial.

Under international human rights law, “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”⁸ Detention before trial must be the exception rather than the rule.⁹ Amnesty International’s position is that government should not arrest and detain individuals on security grounds unless there is an intention to lay criminal charges and bring the individual to trial in a reasonable period. The Human Rights Committee has stated that “such detention presents severe risks of arbitrary deprivation of liberty.”¹⁰

TORTURE AND OTHER ILL-TREATMENT

Amnesty International remains concerned that torture and other acts of ill-treatment are not specifically criminalized under the Indonesian Criminal Code or other laws, even though Indonesia is a state party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and is accordingly under a treaty obligation set out in Article 4(1) of the Convention to ensure that all acts of torture are offences under its criminal law. Indonesia is also obliged under international law to ensure that statements or other forms of evidence elicited as a result of torture, ill-treatment or other forms of coercion are excluded as evidence in all proceedings, except those brought against suspected perpetrators of such abuse (as evidence that the statement was made).¹¹

⁶ See Article 4 of the ICCPR. And see Human Rights Committee, General comment no. 29: States of emergency (article 4), UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001,

⁷ See footnote 3 above.

⁸ ICCPR, Article 9(3).

⁹ See ICCPR Article 9(3). And see Human Rights Committee, General comment No. 35, Article 9: Liberty and security of person, UN Doc. CCPR/C/GC/R.35/Rev.3, 10 April 2014, para. 38.

¹⁰ Human Rights Committee, *ibid.*

¹¹ Convention against Torture, Article 15.

Torture and other ill-treatment are prohibited absolutely under international law, including treaties to which Indonesia is a state party, at all times. There are no exceptional circumstances, including threats of terrorism or other violent crime, which can be used to justify any departure from this absolute prohibition.¹²

The draft amendment should include a provision that explicitly states that nothing in the law should be interpreted or applied in a way that conflicts with, or is in any way inconsistent with, Indonesia's international human rights obligations, in particular its obligations regarding the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

EXPANDING THE SCOPE FOR THE USE OF THE DEATH PENALTY

Law No. 15/2003 already imposes (optionally) the death penalty on “anyone who commits violence or threatens violence that takes ‘massive casualties’ or destroying strategically vital objects, using chemical or biological weapons, transferring illegally any firearms or explosives into Indonesia to be used for ‘terrorism acts’ and for any person who masterminds those actions under the Counter-Terrorism Law”.

The proposed amendments, if adopted, would add the imposition of the death penalty for encouraging another person to found, manage or administer a terrorist group (under Article 14). This provision could cover acts that do not constitute intentional killing and as such do not meet the threshold of the “most serious crimes” to which the use of the death penalty must be restricted under international law and standards.¹³

Moreover, the expansion of the scope of the death penalty is contrary to international standards on the death penalty. The UN Human Rights Committee has stated that it “raises questions as to the compatibility with article 6 of the International Covenant on Civil and Political Rights” and the UN Commission on Human Rights in 2005 called upon all states that still maintain the death penalty “not to extend its application to crimes to which it does not at present apply”.¹⁴

Amnesty International opposes the death penalty in all circumstances and for all crimes. The organisation considers the death penalty a violation of the right to life and the ultimate cruel, inhuman or degrading punishment. It calls on all states which have not yet done so, including Indonesia, to abolish the death penalty for all crimes.

INVOLVEMENT OF THE MILITARY IN COUNTER-TERRORISM MEASURES

The draft amendment proposes involving the military in anti-terrorism law enforcement operations as part of “military operations other than war” and this is to be regulated by a Presidential Regulation. The Indonesian lawmakers consider the

¹² See Convention against Torture, Article 2(2); ICCPR, Articles 7 and 4(2).

¹³ ICCPR Article 6(2); UN Safeguards guaranteeing protection of the rights of those facing the death penalty, Approved by Economic and Social Council resolution 1984/50 of 25 May 1984, Safeguard No. 1; Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Doc. A/67/275 (2012), para.122.

¹⁴ Concluding observations of the Human Rights Committee: Peru, UN Doc. CCPR/C/79/Add.67, 25 July 1996, para.15. See also UN Commission on Human Rights, Resolution 2005/59 of 20 April 2005.

police to be incapable of facing the challenges posed by the recent attacks on their own. However, this carries a considerable risk of human rights violations.

Military armed forces are instructed and trained to fight an enemy. Their operational mind-set and modus operandi is the conduct of hostilities in which different standards apply on the use of force, including lethal force. Their equipment is designed to destroy the enemy, not to minimize damage and injury, nor to protect and preserve life, as would be expected by law enforcement officials. As a result, deploying the military in countering-terrorism carries considerable risks, particularly of the use of unnecessary or excessive force, including lethal force which should only be used as a last resort and where strictly necessary and proportionate. Law enforcement agencies must not to use firearms except when strictly unavoidable in order to protect life.¹⁵ Therefore the army should be deployed to law enforcement operations only in extreme circumstances and for the minimal time required, be subjected to civilian control and not be given any powers that police do not have.

Full accountability – through an independent, impartial and external body - must be ensured for any use of force during counter-terrorism operations, in particular when firearms were used or death or injury occurred. In particular, the various levels of the command structure in charge during the operation must be held accountable. Under Indonesia's Military Criminal Code, military personnel can only be tried in military courts, even for criminal offences, including human rights violations. Amnesty International has repeatedly expressed concerns about the lack of independence and impartiality of these courts.

If The law should insist that as long as the Indonesian authorities are unable to put these safeguards in place, they must refrain from deploying the armed forces in counter-terrorism operations.

RECOMMENDATIONS

Amnesty International recognizes that in recent years there have been several ideologically-based violent attacks on the general population, which the organization abhors. Indonesia has an obligation to protect the right to life of the population, but the recent deplorable attacks must not be used to roll back human rights in the name of security, and it is essential that counter-terrorism measures are taken in strict compliance with the country's international human rights obligations. It is essential that there is a change of course to adopt an approach that respects and protects human rights and the rule of law.

Therefore, we urge you as the Chairperson of the Special Committee on the Revision of the Anti-Terrorism Law of the House of Representatives of the Republic of Indonesia to take the following steps:

- Ensure that the amendments of the existing counter-terrorism law comply with international human rights law and standards, particularly with Indonesia's obligations under international human rights treaties to which it is a state party;

¹⁵ See for instance UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.



- Ensure that the law does not permit any Indonesian authority to detain anyone unless she or he is promptly charged with an international recognizable criminal offence and tried within a reasonable time, and that the lawfulness of such detention is subject to periodic review by the courts;
- Ensure that the law provides that detainees are not restricted in their access to lawyers, that there is prompt notification of and regular contact with family members or a third party of their choice, as a crucial means of protecting the right to a fair trial, the rights of the accused and safeguarding against torture and other ill-treatment;
- Ensure that the law is amended to include an explicit statement that nothing within it may be interpreted as in way conflicting with, or is in any way inconsistent with, Indonesia's international human rights obligations, in particular its obligations regarding the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment; it should also include a provision that explicitly states that statements or other forms of evidence elicited as a result of torture, ill-treatment or other forms of coercion must be excluded as evidence in criminal proceedings, except those brought against suspected perpetrators (as evidence that the statement was made);
- Ensure that the provisions extending the scope of the death penalty are removed, and establish a moratorium on all executions, commute existing death sentences and bring national legislation regarding the death penalty into line with international law and standards as first steps towards abolition of the death penalty for all crimes;
- The law should clarify that the military may carry out police functions only in extraordinary circumstances, and when doing so, soldiers may have no more powers than police officers and be subject to the same laws and regulations, as well as to civilian judicial oversight. The law should clarify under what legal and operational procedures the military is permitted to perform police functions and use police powers.

Thank you for your attention.

Yours sincerely,

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Director of Amnesty International Indonesia