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Indonesia: Right to a fair trial must be guaranteed in law and practice

Amnesty International welcomes the commitment of the Indonesian government to review the country's Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP) with a view to strengthening human rights protection and the rule of law. The Code determines the procedures and rights of individuals at the different stages of investigation and trial. Its provisions should include the crucial safeguards of the right to a fair trial and protection from the abuses of torture and arbitrary detention. The draft revised KUHAP contains notable improvements from the existing Code in the protection of the rights of suspects and defendants. However some key safeguards of the right to a fair trial remain absent from the revision, leaving individuals open to human rights violations at different stages of investigation and trial procedures.

In a public document launched today, "*Comments on the draft revised Criminal Procedure Code*" (AI Index: ASA 21/005/2006), Amnesty International highlights provisions in the draft which still fall short of international law and standards. The document contains recommendations to the drafting team and other relevant parties on revising these areas of concern in order to bring them into alignment with international law and standards and to safeguard the right to a fair trial.

Amnesty International is concerned that the draft revised KUHAP lacks several fundamental safeguards which ensure that an individual is not unjustly punished, arbitrarily detained or subject to torture or ill-treatment. For example, the draft revised KUHAP must be amended to require that any person who is arrested or detained must be promptly brought before a judge or other officer authorised to determine the legality of the arrest or detention. This should protect individuals from being detained illegally and reduce the risk of (torture and) "disappearances".

The draft revised KUHAP also lacks provisions which specifically require the authorities to inform a suspect or defendant of their rights, in a timely way, and in simple language. These include the right to access a lawyer and have a lawyer present at all stages of the investigation; the right to an interpreter; the right to access family members; the right to medical assistance; and the right to remain silent. In order to exercise his or her rights a suspect or defendant must know that such rights exist. The draft revised KUHAP also lacks sufficient provisions to ensure that everyone detained or accused of a criminal offence has the right to legal counsel during detention, at trial and on appeal. Furthermore, the draft revised KUHAP fails explicitly to acknowledge and safeguard the right of every person suspected of, or charged with, a criminal offence to be presumed innocent until and unless proved guilty according to law after a fair trial.

Further to the areas mentioned above, which constitute fundamental safeguards to the right to a fair trial, the draft revised KUHAP does not contain sufficient provisions to deter the use of torture and ill-treatment in

all circumstances. Firstly, the revision is silent on the use that may be made in court of information obtained as a result of torture and/or ill-treatment. Contrary to international standards, there is no clear provision that excludes the use of evidence or testimony in court that has been obtained as a result of torture. It is left to the discretion of the judge as to whether or not evidence allegedly obtained under torture is admitted, and if it is admitted, what weight it can be given. The judge does not have the authority to order an investigation by an impartial authority into an allegation that evidence or testimony was obtained under torture or ill-treatment. Secondly, the new office of Judicial Commissioner, established amongst other things to hear pre-trial challenges to the legality of arrest, detention and investigation, does not have explicit authority to inquire into the conditions of detention and the treatment of suspects in detention.

A recent case highlights the infringement of such protections in Indonesia and demonstrates the need to include in the revision the provisions mentioned above, including the notification of rights, the right to legal counsel, presumption of innocence and prohibition of the admissibility in courts and any other proceedings of any evidence elicited as a result of torture or ill-treatment.

In August 2006, 16 men were convicted to between five and 15 years' imprisonment in relation to the violent events which caused the death of three police officers and an air-force officer in Abepura, Papua on 15-16 March 2006. There were reports that the 16 men were subjected to intimidation and ill-treatment during interrogation in order to force them to confess before the court that they were guilty of the crimes of which they were accused. One detainee reported that a senior police officer threatened to shoot him if he did not disclose certain information. The defendants also reported that, two hours before their trial, they were kicked with boots and beaten on their heads and bodies with rifle butts and rubber-batons by police officials in order to compel them to admit that they committed the crimes they were charged with. Those who refused to acknowledge the charges they were accused of during the trial also experienced similar ill-treatment on their return to the police detention centre. Some of the detainees reported that they had no contact with the lawyer who was assigned to them before the trial started in May 2006 and so were unaware of their rights and of the legal procedures. Furthermore, reports indicate that during the trial judges may have undermined the principle of presumption of innocence and the right of the defendants to examine the witnesses against them.

This case clearly demonstrates serious obstacles to the right to a fair trial in Indonesia, and the right to be free from torture and ill-treatment. The draft revised KUHAP must be amended to reflect accurately international human rights standards in order to provide effective protection to suspects and defendants at all stages of investigation and trial. Further, those provisions must be adhered to and enforced.

Amnesty International has documented many cases where those safeguards that the existing KUHAP does contain are often ignored in practice. For instance, suspects have been arrested without warrants; their families have not been advised of their arrest or detention; suspects have been denied access to legal counsel and told that they do not require a lawyer or have been threatened if they asked to contact one; and suspects have been forced to sign confessions under threat of force or subjected to torture or ill-treatment. All of these acts are in violation of the provisions of the existing KUHAP and yet they occur, often without any response from the authorities.

Amnesty International urges the Indonesian government, together with the drafting team and other relevant parties, to take into account the organization's recommendations during the revision of the existing KUHAP and ensure that fair trial standards are fully implemented at all stages of investigation and trial procedures in Indonesia. Both law and practice must reflect adherence to international standards on fair trial to ensure that all suspects, victims and witnesses are fully protected in accordance with international law.