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Terrorism and Human Rights

The Commission for the Disappeared and Victims of Violence (KontraS)
Democracy Education Association (P2D)

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I. Introduction

1. The Commission for the Disappeared and Victims of Violence (KontraS) and Democracy Education Association (P2D) submit this report for the Universal Periodic Review (UPR) of Indonesia that will take place in May 2017.
2. KontraS is a national human rights non-governmental organization based in Jakarta, Indonesia. Its main activities are geared towards support for the victims of human rights violations. It seeks to improve respect and protection for human rights within Indonesia through advocacy, investigations, campaigns, and lobbying activities. KontraS monitors several issues such as enforced disappearances, torture, impunity, and violations of civil, political, economic, social, and cultural rights.
3. Democracy Education Association (P2D) is an organization for the constitutional democracy defenders in Indonesia. The aim of this organization is to fulfill the fundamental rights of Indonesian people generally of the political and democracy education and also democratic institutions amongst the community. The main focus of P2D works are education, research, analysis of democracy, citizenship and constitutionalism.

II. Overview

4. Government of Indonesia should be appreciated in eradicating terrorism since 2002 that came widely whether domestically or internationally. Although, there are no specific and comprehensive evaluations related with the performance of Special Detachment Unit of Counterterrorism 88 (Densus 88) in conducting counterterrorism operations. Recently, the policy of anti-terrorism in Indonesia is not completed with the human rights professionalism and protection instruments, particularly for the terrorist suspects. There is also no significant correction into the excesses that appeared seriously from the Densus 88 operation. Government of Indonesia recently instead more rushing to mainstreaming the coercive policy such as conducted

revision on the amendment of the Anti-Terror Bill that highly potential in violating human rights of the Indonesian citizen.

III. Government of Indonesia policy in conducting law enforcement on Anti-Terrorism

5. **Prevention of terrorism by law:** Indonesia already issued the policy in the prevention and suppression of the financing of terrorism using the Law No. 9/2013. This law was established as the consequence of the ratification on International Convention for the Suppression of the Financing of Terrorism in 1999. On the other hand, the terms on the regulation of the legislation related with the financial of terrorism has not yet regulated the prevention and suppression the criminal offense of the financing of terrorism comprehensively.¹
6. Ministry of Defence also began to issued a controversial discourse which is the proposal to make the Defence Intelligence Agency (BIP). However, actually Indonesia already has Strategic Intelligence Agency (BAIS) that directly below the command of National Military Forces (TNI), BIP proposal of the Ministry of Defence try to seek opportunity in ‘bureaucracy game’ after the Presidential Decree No. 58/2015 established, interpreting the article 43(e) which stated, “*the implementation of other function be given to the minister.*” This is actually complicate the Law No. 17/2011 regarding State Intelligence that also regulated the defence intelligence and/or military intelligence.
7. The Ministry of Defence also established the “State Defense” program that claiming to build nations character. However, the establishment of this program with military basic exercise will open the form of new militia/paramilitary. In the history of Indonesia militia or paramilitary frequently became the part of problems in various conflicts such as in Timor Leste, Aceh and militia in Papua or even in Pamswakarsa in Jakarta.²
8. **Accountability of law enforcement and security apparatus:** By this far, there are no amendment on several regulations that could improve the state security apparatus and law enforcement accountability such as amendment on the Law on Military Court and the draft on Anti-Torture Bill.
9. **Human rights instruments in the state security forces regulations in counterterrorism:** the government is prefer to chose the coersive approach to counter terrorism such as to revise the more strict policy that potentially violating human rights. In the amendment there are several ambiguous phrases in the Draft Bill such as: the most serious crimes and/or extraordinary crimes, violence threats that could give fear, strong and extreme, international organisation, widely, mass,

¹ See more: PPAK. 2013. Undang-Undang No. 9 Tahun 2013 regarding Prevention and Suppression of the Financing of Terrorism. The source can be accessed at: <http://idih.ppatk.go.id/undang-undang-nomor-9-tahun-2013-tentang-pencegahan-dan-pemberantasan-tindak-pidana-pendanaan-terorisme/>

² See more: KontraS Press Release. 2015. Bela Negara oleh Kementerian Pertahanan adalah Kurang Tepat. The source can be accessed at: <http://kontras.org/home/?id=2176&module=pers>

environment, paramilitary, other trainings, encouraging others, preparation of making, giving support, and other phrases that could interpret wrongfully by those who really wanted to eradicate terrorism radically and tend to abuse of power.

10. The Draft Bill also showing the high potentation on the human rights violations such as freedom of thinking, opinion and expression, freedom from torture, freedom from arbitrary arrest and freedom from unfair trial, freedom from discrimination, citizenship rights and not fulfilling the rights of the victims such as compensation and remedy.
11. The formulation of the Bill was not begin with the ratification and not adopting several international instruments such as Rome Statute of International Criminal Court to see the map of 'the most serious crimes and/or extraordinary crimes' equally with the international law dynamics that already developed universally. Government of Indonesia also still not yet established the revision of the Penal Code (KUHP) in making torture as criminal act, since torture have a high potentation on the implementation of legal process in terrorism. Prioritizing the Draft Bill on Torture to guarantee the prevention of torture in the process of counter terrorism, particularly in the articles that potentially affecting the torture occurred.
12. The Bill on Tapping and Personal Data Protection that could become the legal foundation in the tapping article in the Bill, Bill on Special Support that could provide more explanation in the function of TNI support, also the Bill on Military Court to provide the evaluation and prevent the TNI arbitrary act in conducting legal violations in the name of counter terrorism. The urgency to put forward to ratify the Arm Trade Treaty to prevent the illegal firearms trade. This treaty could be use as one foundation by the government of Indonesia to prevent the terrorism and not violating the human rights at the same time in the international law framework.
13. **Human rights violations and criminalisation against the suspects of terrorism:** In 2013, KontraS recorded at least 66 incidents of counter terrorism operations. In 2014, at least 52 incident of operations with 107 people in detention, 14 people released, 6 persons died and 9 persons injured. The arrest practices tent to be stronger in the particular area such as Central Java and Central Sulawesi. In 2015, at least 41 incidents with the victims conditions such as 73 arrested, 23 died, 7 persons injured. In this period, KontraS specifically followed following the security operation in Poso, Central Sulawesi with code name Camar Maleo.³ The operation that established throughout the year of 2015. KontraS found several trend in the excessive law enforcement to tackle ISIS group or those who just came back from Syria. The deception and arrests without valid frequently appeared and dominated in this year.
14. Aftermath the Sarinah bombing incident in the beginning of 2016, the tightening operation of anti-terror and security conducted simultaneously in Indonesia. In Java, Poso, West Nusa Tenggara which is the territory of operation targets. In Poso itself, the security operation Camar Maleo continued with code name Tinombala. Arrestinf the Sarinah bombing perpetrator network, Bahrin Naim with the logic of ISIS frequently justified without a clear legal procedure. The case

³ KontraS Monitoring Data. 2016.

of arbitrary arrest, extrajudicial killing and ambiguous policy making or amendment on Anti-Terror Law repressively committed by the government of Indonesia.

15. Regarding the terrorism operation, throughout the year of 2012, not the least of anti-terrorism operations of Densus 88 that triggered critics due to not applicable of the accountability and human right protection principals. It is also acknowledged there were several operations that no clear measure of prosecution of suspects in terrorism.

III.1 Human rights violations on counter-terrorism operation

III.1.1. Arbitrary acts and extrajudicial killing

16. There were several cases related with wrongful and arbitrary arrests perpetrated by the Densus 88 throughout the mandate was established to countering terrorism in Indonesia. Moreover, the arbitrary acts were followed by other human right violations against the suspects of terrorism such as torture until dead. On July 2013, stray bullet of Densus 88 affected Sujono, civilian in East Java died. This incident occurred while Densus 88 conducted deception against 4 persons of terrorist suspects in Tulungagung. Sujono who was near the crime scene became the victim of stray bullet on his hip.⁴ Similar incident also occurred on October 17, 2013. Densus 88 conducted arrest and shooting against 3 terrorist suspect and inflicted to one of the terrorist suspect, Suardi, a teacher dead because of shooting on his chest.⁵
17. Ayom Panggalih and Nur Syawaludin that became victims of wrongful arrest by Densus 88 in Solo, Central Java on December 29, 2015. Both of them were allegedly committed in terrorism act, therefore they were being arrested by Densus 88 and brought to Laweyan Police Sector after they were assaulted by firearms and being interrogated by Densus 88. However, after the interrogation process, Densus 88 just released them without any clear explanations from Laweyan Police Sector because they did not proved to be committed in terrorism.⁶
18. Arbitrary execution also occurred against Can alias Fajar in Bima, West Nusa Tenggara on February 2016. Densus 88 conducted operations arbitrarily until affecting to the lost of life of Can alias Fajar. The family of Can claimed there were 6 until 7 sounds of firearms. Can was shot while he was sleeping in front of his parents. Can was actually still not yet been verified as committed terrorism, and this incident also occurred in Klaten, Central Java to Siyono. Siyono was arrested by Densus 88 near his resident, KontraS acknowledged that the family did not informed of the reasons why Siyono was being arrested. There was no warrant given by Densus 88. Siyono was dead after being arrested because the allegation of torture against him by Densus 88 with several injuries on his body. Family of Siyono was requested to sign an agreement letter

⁴ See more: KontraS Press Release. 2013. Desakan Penyelidikan Kasus Peluru Nyasar oleh Anggota Densus 88 Terhadap Warga Sipil di Tulungagung, Jawa Timur. The source can be accessed at: <http://kontras.org/home/index.php?module=pers&id=1755>

⁵ See more: Siaran Pers KontraS. 2013. Desakan Akuntabilitas Densus 88 Dalam Operasi Penanggulangan Terorisme di Bone, Sulawesi Selatan. The source can be accessed at: <http://kontras.org/home/index.php?module=pers&id=1795>

⁶ See more: Siaran Pers KontraS. 2016. Densus 88 Minta Kewenangan Berlebih Tetapi Tak Mau Dikontrol. The source can be accessed at: <http://kontras.org/home/index.php?module=pers&id=2243>

to not demand for legal process or justice because of the torture allegation. The verdict of ethical code court against two members of Densus 88 only with an obligation to request apologize towards the Indonesian National Police institution (Polri) also demotion sanction, which is to be not recommended continuing the duty in Densus 88 for four years. The Ethic Judges only claimed the suspects as conducting procedures violations against Siyono in the operation. Moreover, there were no criminal sanctions against the suspects according to national criminal law or Penal Code. The arrest of Siyono also turned out to be wrongful arrest.⁷

III.1.2. Tinombala-Camar Maleo operations, Poso, Central Sulawesi

19. The security operations in the name of terrorism eradication that conducted in Poso, Central Sulawesi already conducted since 2015 with code name Camar Maleo Operation. However, in the implementation, the evaluation mechanism was neglected by the government to show the accountability and transparency process in the law enforcement and security that affected to the minimum of human rights protection particularly towards the civilians in the area of operation. This operation also showing that the government did not learned from the past operations such as Sintuwu Maroso that conducted for 5 years with 7 times of operation extension (from 1998 until 2005) that proved to have failure to maintain the security stability and restore the situation in Poso after the conflict. Camar Maleo operation that conducted throughout the year of 2015 that continued with Tinombala operation in the beginning of 2016, at least 33 people were dead, including TNI/Polri members or civilians also the group of Santoso, 56 people that 2 of them were women arrested without a clear procedures and allegedly amongst of them were wrongful arrests and torture practices victims perpetrated by TNI/Polri.⁸
20. The minimum of supervision spaces to the security operation including the evaluation that ideally did not only committed by the internal members, however in the external level which involving several state independent supervision commission such as Komnas HAM, Komnas Perempuan and Commission OF Corruption Eradication (KPK), that amongst of them has not yet taken as one of the effective policy to measure the security operation indeed as the part of security policy solution in Indonesia with a basis of human rights standards.

III.2. Problematic articles in the Anti-Terror Law No. 15/2003 Draft Bill

21. The Indonesian government already made several repressive acts, which one of them is made amendment on the Law No. 15/2003 regarding Anti-Terrorism. There are several misintepretation of the international law, such as the definition of international organisations which mentioned in the article that international organisations only the organisations below the United Nations bodies. Hate-speech being inserted into the revised Anti-Terrorism law is vulnerable to misinterpretation similar to the Law No. 11/2008 regarding Electronic Transaction and Information (ITE), specifically article 28 which is often used to criminalise individuals that are

⁷ See more: KontraS. 2016. Putusan Sidang Kode Etik Anggota Densus 88 dalam Kasus Kematian Siyono Tertutup dan Tidak Memenuhi Rasa Keadilan. The source can be accessed at:

<http://kontras.org/home/index.php?module=pers&id=2275>

⁸ See more: KontraS. 2016. Surat Terbuka: Perlunya Evaluasi Terkait Dengan Operasi Keamanan di Poso. The source can be accessed at: <https://www.kontras.org/home/index.php?id=2235&module=pers>

using their right to freedom of opinion and expression. There are several highlights that KontraS already made for the inputs to the House of Representatives (DPR) inter alia:

1. There are many confusing phrase using that will affected to widen the arbitrary and wrongful act conducted by the security apparatus. Such as the term of deradicalisation, there are no clear indicators related with the “strong and extreme” acts. The definition as well only pointing deterrence effect that not focusing on the government efforts to resolve the root problems of radicalism in Indonesia.
 2. There are no clear definition that could referred on the protection of witness and victims, including compensation. The definition of the Witness and Victims Protection (LPSK) Law No. 31/2014 should become the main referrence and then develop with the six categories of victims in the international law .
 3. There are no definitive referrence regarding the availability of restitution and compensation mechanism.
 4. The use of death penalty on the maximum punishment of terrorism act considered in this law to make deterrence effect is actually not effective and will extend the legal and human rights violations in Indonesia since the legal sytem in Indonesia still need several development and improvements.
22. There is a high potential of torture, abuse of authority, and violation of prisoner rights during the detention period and moreover, death sentence to the suspects of terrorism. Additional detention time which is greatly excessive of the standard period set out in the Criminal Procedure Code.⁹

This law does not include issues concerning the sphere of surveillance in the anti-terror function, especially those involving cross-operating model of security institutions. Functions and involvement of the National Counter Terrorism Agency (BNPT) stipulated in Article 43A (5) is more in the interest of policy and national strategy. Keep in mind, that the BNPT is not the National Security Council who possesses the right to determine patterns, strategies and security policies, including counter-terrorism in Indonesia. This agency is responsible only for the coordination of counter-terrorism which is mandated through Presidential Decree No. 46 Year 2010 regarding the National Counter Terrorism Agency.

IV. Recommendations

The government of Indonesia should:

1. The President should commanding the process of audit/accountability of human rights related with the counter-terrorism operations, which committed violence against the suspects and not guarantee the respect on human rights, and the rights of the suspects itself.
2. The government of Indonesia should provide the rights of victims and family of victims with correction efforts, since such effort are very minimum committed by the perpetrators such as

⁹ See more: KontraS. 2016. Pasal Bermasalah Pada Naskah RUU Anti -Terrorisme Nomor 15 Tahun 2003. The source can be accessed at: <http://www.kontras.org/data/Pasal%20bermasalah%20RUU%20Antiteror.pdf>

security apparatus. There should be remedy and compensation towards the victims and family of victims that affected by the arbitrary acts on the counter-terrorism operations.

3. The House of Representatives (DPR) should consider the analysis and inputs that already made by several human rights non-governmental organisations in Indonesia to improve the Anti-Terror Draft Bill, to be not contradict with the international human rights standards and also overlapped to other national laws.
4. The government should command National Police, Ombudsman and Komnas HAM to immediately conducting legal act, simultaneously with complementing the criminal law and ethics law mechanism of the series of allegation of the maladministration and torture affecting to several arbitrary executions in the counter-terrorism operations.
5. The government should immediately conduct evaluation and improvement to the work of Special Detachment Unit of Counter-terrorism (Densus 88) in respecting the inquiry procedures legally according to law.
6. The government should open the evaluation of the Camar Maleo operation transparently. The evaluation measures could not be seen from only targeting one group such as Santoso, however the consideration of right to security for the civilians in the conflict area, prevent criminalisation and abuse of authority in conducting extrajudicial killing in the security operation.
7. The government should have the remedy and compensation mechanism that provided to the individuals or the civilians that already became the victims of the security operations, not only highlighting the successfulness of the operation but also the impacts to the civilians in the conflict area.