

PROBLEMATIC ARTICLES ON ANTI-TERRORISM DRAFT BILL NO. 15/2003

Articles	Human Rights Violations Potentions	Contradictive Law Frameworks
<p>Article 1 (8)</p> <p>“Deradicalisation is a act process which conducted by purpose to individuals or groups that not conducting act or ideas that demand some changes that stated strongly or extreme leads to Terrorisms.”</p>	<p>There are no clear indicator regarding with “strong and extreme”</p> <p>Act and ideas that strong and extreme in this context need a clear indicator. The interpretation of this strong ideas could violate freedom of speech and expression and lead to state action to conduct arbitrary arrest. It would be appear subjectivity of the law enforcement apparatus in field of identification of “strong” or “extreme.”</p>	<p>Contradictive with article 28E and 28I of 1945 Constitution that guarantee the freedom of speech, Universal Declaration of Human Rights (UDHR) article 18 and 19 and International Covenant on Civil and Political Rights article 18 and 19 regarding the freedom of thinking, speech and expression</p> <p>The regulation also potentially violate International Covenant on Civil and Political Rights article 9 regarding freedom and individual security where there is no one shall be subjected to arbitrary arrest or detention.</p>
<p>Article 6</p> <p>“Convicted with death penalty, lifetime prison or punishment minimum of 4 (four) years and maximum 20 (twenty) years”</p> <p>Article 14</p> <p>“Everyone that already deliberately moving another person to conduct terrorism act as stated on the articles 6,7,8,9,10, 10A, 12, 12A, 12B convicted with death penalty, lifetime prison, or prison in 20 (twenty) years.”</p>	<p>Death Penalty</p> <p>There is a potention of right to life violation as regulated in the International Covenant on Civil and Political Rights (ICCPR), particularly article 6 (1)</p> <p>Article 6 (2) as quoted: “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crime in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out</p>	<p>This Consideration then contradict with:</p> <p>Article 6 (4) ICCPR – possibility to receive amnesty and clemency from President</p> <ol style="list-style-type: none"> 1. Article 6 (5) IICPR – death penalty shall not sentenced against them who are under 18 years old and to pregnant women 2. Article 6 (6) ICCPR – death penalty moratorium

	pursuant to a final judgement rendered by a competent court.”	
<p>Article 12 B</p> <p>“Besides major punishment, every Indonesian citizen that are perpetrators of Terrorism as stated on point (1), point (2) and point (3) could be sentenced additional punishment of passport revocation.”</p>	<p>Passport revocation is inaccurate, violating citizenship rights and potentially abused.</p> <p>Potention of individual rights violations in this context is the right to liberty of movement also right to recognition or citizenship.</p>	<p>Citizenship revocation or nationality contradict with Universal Declaration on Human Rights (UDHR) article 15, International Convention on the Elimination of Racial Discrimination (CERD) article 5, Convention on the Elimination of Racial Discrimination Against Women (CEDAW) article 9. The issue of nationality also regulated in the Convention on the Reduction of Statelessness by the UNHCR 1961. Beside that, it could violate individual right to liberty of movement that regulated in the UDHR article 13.</p>
<p>Article 13 A</p> <p>“Everyone that deliberately disseminate speech, attitude, behavior, writings, or shows that could trigger act of violence and anarchist or act that could harm particular individuals or groups and/or humiliate dignity and intimidating particular individuals or groups could affecting Terrorism, sentenced of prison punsihment 3 (three) years minimum and 12 (twelve) years maximum.”</p>	<p>Potentially multi-interpretation on the category of the act od anarchism or harming particular groups</p> <p>Potention of this right violation could occur because the existence of subjectivity from the law enforcement apparatus in field as occur in several mass action to demand rights such as labor goruos or community groups that targeting to particular groups such as corporation or public officials. They could be categorized by state as group that humiliating dignity and snared by Anti-Terrorism Law.</p> <p>This article also have multi-interpretation on the state regulation on law enforcement for hate speech that</p>	<p>Contradict with UDHR article 18, 19, 20; ICCPR article 18, 19 and 21 regarding freedom of thinking, speech, expression and assembly.</p> <p>This regulation also potentially violate ICCPR article 9 regarding freedom and self-security where there is no one shall be subjected to arbitrary arrest and detention.</p> <p>Particulary on article 20 (2) ICCPR – the prohibition on every act that encourage hatred and provocation to discrimination prohibited by law; however not necessarily include as the element of terrorism act</p> <p>Hate speech that include in the Anti-Terrorism Law revision is very vulnerable to be interpret as occurred in the Law No.</p>

	<p>still could not categorized as terrorism crime, although already fulfill crime precondition.</p>	<p>11/2008 regarding Information and Electronic Transaction (ITE), particularly on the article 28 that oftenly used to criminalized individuals that using their freedom of speech and expression.</p> <p>Now, however rule of law still very limited to prosecute the perpetrator of hate speech, however the National Police internally already have Circular Letter No. 6/X/2015 regarding Hate Speech Handling that could in line with Chief of National Police Regulation no. 8/2009 regarding Implementation Principals and Human Rights Standards on Discharge of National Police Duties.</p> <p>Beside that, it is also important to immediately revise the Penal Code in regards to pursue the function of enforcement and law punishment related with hate speech that oftenly occur nowadays.</p>
<p>Article 16A</p> <p>“In the context of terrorism perpetrator involving child, punishment that sentenced added half from the sentence that threatened.”</p>	<p>Verdict addition half from threatened</p> <p>Threat on some international law instruments that has been ratified by the Indonesian Government:</p> <ol style="list-style-type: none"> 1. Convention on the Rights of the Child (CRC) 2. Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 	<p>Revoke the additional sentence half from the threatened, because this matter is contradict with General Comments No. 8 CRC – require protection of human dignity and physical integrity and equal protection under the law (Para.2) The principle of the minimum necessary use of force for the shortest necessary period of time must always apply. (Para 15)</p> <p>General Comments No. 13 CRC – the position that all forms of violence against children, however light, are unacceptable.</p>
<p>Article 25</p>	<p>High potention on torture, abuse of</p>	<p>Detention time period in the phase of</p>

<p>(2) “On the purpose of investigation, investigator authorized to conduct detention against the suspects in 180 (one hundred and eighty) days maximum.”</p> <p>(3) “Detention time period as mentioned on point (2) could be extend by the public prosecutor in 60 (sixty) days maximum.”</p> <p>(4) “On the purpose of prosecution, detention that given by the public prosecutor applied for 90 (ninety) days maximum.”</p> <p>(5) “The time period of detention in purpose of prosecution as mentioned in point (4) could be extend by the District Court Judge in 60 (sixty) days maximum.”</p> <p>(6) “Excluded from the detention time period as mentioned on point (3) and point (5) for the purpose of investigation and prosecution, detention time period could be extend by the Chief of District Court in 60 (sixty) days maximum.”</p>	<p>authority and neglect on the rights of the custody in the process of detention</p> <p>The addition of detention time period which too excessive from the time period standard that regulated in the Criminal Procedure Code (KUHAP). In this Draft Bill, detention time period from the investigation until the extention of detention time by the Judge is 300 days. It is harming the rights of the suspects to be prosecuted in the court quick and modest. This authority also very potentially violating human rights, reminding that there are still numerous numbers of torture practice in the law enforcer environment in Indonesia. This authority already opposite with the accuisatoir principal which in this context recognize the principle of presumption of innocent.</p>	<p>investigation that regulated in the article 25 point 2, 3, 4, 5 and 6, is too long if we compare with the detention time period that regulated in the KUHAP.</p> <ul style="list-style-type: none"> • Detention time period in the KUHAP in the phase of investigation is 20 days and could be extend into 30 days. • Prosecution period, detention period in the KUHAP is 30 days and could be extend into 30 days more. The total of detention period in the KUHAP is 170 days or less than 6 month approximately. <p>This matters also contradict with the ICCPR article 9 regarding right to liberty and security of person where no one shall be subjected to arbitrary arrest or detention.</p>
<p>Article 28</p> <p>“Investigator could conduct arrest against anyone that highly suspected conducting terrorism act in 30 (thirty) days maximum.”</p>	<p>High potention on torture and arbitrary act in the process of arrest.</p> <p>Arrest additional time is excessive from the time period standard in the KUHAP, which is 30 days. The period of arrest is inaccurate and highly potention on human rights violations, reminding that still numerous numbers of torture in law</p>	<p>Detention period in the phase of investigation that regulated in the article 19 is too long if we compare with arrest period that regulated in the KUHAP. Arrest period in the KUHAP only for 1x24 hours.</p> <p>This inhuman detention period could violate article 5 and 9 UDHR regarding torture, arrest and inhuman and arbitrary</p>

	enforcer environment in Indonesia.	treatment under the law. Including contradict with the ICCPR article 9 right to liberty and security of person where no one shall be subjected to arbitrary arrest or detention.
<p>Article 31</p> <p>(1) “Based on a minimum of 2 (two) legitimate evidences, investigator authorized to:</p> <ul style="list-style-type: none"> a. Open, check and seized letter and message through postal or other shipping service that have a relation with terrorism act that being investigated; b. and tapping conversation through phone or other communication gadget that suspected used to prepare, plan and conduct terrorism act, or to acknowledge the existeny of terrorists and terrorism networks.” 	<p>Tapping without regulation clearly have a potenton of abuse of authority.</p> <p>Tapping authority which regulated in this Draft Bill is contradict with the statement of the Constitutional Court before that assess the needs of particular Law that regulate tapping generally until the instructions of tapping for each bodies that have the authority. This law really needed because until now there is remain no synchronized regulation related with tapping, therefore it is potentially harming the contitutional rights of the citizen generally.</p>	<p>Before there is a verdict from the Constitutional Court towards the assessment on Law on Information and Electronic Transaction (ITE) No. 5/PUU-VIII/2010 that canceled all forms of tapping on Law on Information and Electronic Transaction (ITE) where there are no normative regulation related with tapping, therefore it is possible to occurs deviation in the implementation.</p> <p>Constitutional Court even already proposed the establishment of law that could regulate tapping matters in Indonesia. This step still remain has no positive follow up from the executive and legislative parties.</p> <p>Tapping also considered contradictive with article 28 1945 Constitution regarding right to privacy.</p>
<p>Article 43A</p> <p>(1) “In purpose of counter-terrorism, investigator or public prosecutor could conduct prevention towards anyone in particular that allegedly conducting terrorism to bring or placed somewhere that become the investigator or public prosecutor jurisdiction in 6 (six) months maximum.”</p> <p>(2) National policies and strategies of the counter-terrorism</p>	<p>Potentially abuse on “deradicalisation” as form of inaceration</p> <p>There are no clear measures and explanations regarding deradicalisation. And then, the program/method of the deradicalisation itself is unclear, whether it will be as a form of drugs users rehabilitation facilitation or in other forms.</p>	<p>Contradictive with article 28E and 28I 1945 Constitution which guarantee freedom of thinking, speech and expression. ICCPR article 9 regarding right to liberty and security of person where no one shall be subjected to arbitrary arrest or detention.</p> <p>Beside that, this program could violate right to liberty of movement which regulated in the article 13 UDHR and article 12 ICCPR.</p>

<p>as mentioned in point (2) including:</p> <p>c. deradicalisation</p> <p>(4) Deradicalisation as mentioned in point (3) letter c conducted towards: ...</p> <p>g. particular persons which allegedly conducting terrorism act</p>	<p>Regarding this program, there are no instructions regulated to place someone that will be deradicalised, which is as an agreement consciously with the targeted person. Including there are no clear track records of “particular persons that allegedly conducting terrorism act” for the deradicalisation program which vulnerable to be abused to detain particular individuals for political interests.</p> <p>This act likely to create detention center models that vulnerable to be abused and uncontrolled, particularly related with the implementation of inhuman treatment and torture, as occurs in Guantanamo Bay.</p>	
<p>Article 43B</p> <p>(1) National policies and strategies in counter-terrorism conducted by the National Police of the Republic Indonesia, National Military Forces of the Republic Indonesia also other related government institutions according with each authority that coordinated by government institution non-ministry that conducting counter-terrorism</p> <p>(2) The role of Indonesian National Military Forces as mentioned in point (1) functioned to give support to the National Police of the Republic Indonesia</p>	<p>Emphasized National Military Forces (TNI) which getting further from the approach of law enforcement on counter-terrorism</p> <p>This new plan open spaces for TNI involvement in the operation handling besides war (OMSP) which already regulated in Law No. 34/2004 regarding National Military Forces.</p> <p>However, TNI involvement not necessarily involving them inside the law enforcement; with the same authority with the National Police to conduct interogation investigation function and others.</p>	<p>To involve TNI in counter-terrorism there is article 7 point (3) Law No. 34/2004 regarding TNI; where there is element of political decision that come from President and House of Representatives (DPR) for every military operation besides war involving TNI.</p>

- This Draft Bill not putting the concern of supervision on the anti-terror functions, moreover involving cross security institution operation model. Function and involvement of National Counter-Terrorisms Agency (BNPT) that mentioned in the article 43A (5) for national policy and strategy interests. Shall be remember that BNPT is not National Security Council that has a right to decide the security patterns, strategies and policies, including anti-terror in Indonesia. This agency only to coordinate anti-terror handling, as mandated by President Decree No. 46/2010 regarding National Counter-Terrorisms Agency (BNPT).
Supervision function will give accountability standards, transparency and evaluation regarding the anti-terror operation. If there are authority, procedure mistaken and legal violations then there should be some working team that could give strict recommendation towards the decision and policy makers to immediately take several correction step accurately and measurable by public.
- This Draft Bill not putting restoration function. In Indonesia itself there is Law No. 31/2014 regarding the amendment of Law No. 13/2006 regarding Witness and Victim Protection and Government Regulation No. 92/2015 regarding Criminal Procedure Code (KUHAP) for victims of wrongful arrests (Government Regulation on Compensation: PP Ganti Rugi). If the supervision function find the existence of human rights violation spaces that involving victims of human rights violations (including them whose arbitrary arrest, extrajudicial killing, unfair trial and others) therefore, whether those Laws or Government Regulations should become a reference of the function implementation of restoration on the terrorism act.
- Until today, in Indonesia it is still unknown the regulation regarding assistance duty of National Military Forces (TNI) towards the National Police (Polri) function. TNI assistance duty towards National Police should clearly regulated, as mandated on People's Consultative Assembly Decree (TAP MPR) No. VI/2000 regarding Disjunction of National Military Forces and National Police also TAP MPR No. VII/2000 regarding National Military Forces and National Police Role. Reaffirm assistance spaces between TNI and Polri will connect the gray space between both institutions. Beside that, if there are a procedural abuses in the security operation involving TNI, KontraS consider it is important to immediately prioritize amendment Law No. 31/1997 regarding Military Court. This law oftenly used as become alibi by the TNI in field that crossing with sensitive issues inter alia, human rights violation crimes to be absent from their legal obligations. Placing human rights standards on the Law on Military Court, including involving law enforcer function (Polri and Attorney) as investigation team is very crucial to strengthening accountability function and TNI supervision.
- Particularly related with coordination space within the terrorism issue, Indonesia already has Law No. 2/2002 regarding National Police of Republic Indonesia, also reaffirming the major role of Police within terrorism issue.